IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 180 of 1999

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANGALBHAI JESINGBHAI PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR PM VYAS for Appellant(s) : 1,
MRS MANISHA LAVKUMAR SHAH for Opponent(s) ,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 The present appeal is directed against the judgement and order of conviction and sentence passed by Additional Sessions Judge, Nadiad, dated 28th January 1999 in Sessions Case No.246 of 1998, whereby the learned Judge has convicted the appellant-accused for the offence under section 302 of IPC and ordered to undergo imprisonment for life and fine of Rs.1000/-, in default, to suffer simple imprisonment for six months.

2.0 The case of the prosecution, in short, is as under:

2.1 One Shanabhai Parmar, on 18th January 1999, lodged a complaint with Borsad Police Station against the present appellant. He stated in the complaint that he is staying in the house of his father along with his family. Since his mother got strained relations with his father, she has gone to stay with her parents. On 16th July 1998, father of the complainant had sent his son Raijibhai and others to bring the mother of the complainant back stating that in

future he would not quarrel with her. Accordingly mother of the complainant was brought back.

2.2 On the day of the incident the complainant had gone for work. At about 11 O' clock his cousin Chottabhai Parmar came to him and informed that mother of the complainant has expired and father has run away. He, therefore, went to his house where he saw that his mother was lying on the floor and she was dead. He also noticed a saree tied with the fan. At that time his wife Shardaben told him that she had gone for washing clothes, and when she came back her father in law opened the door, came out and told her that he had killed her mother-in-law. She also informed him that after saying so the appellant-accused had gone away and when she went inside the house she saw the dead body of Sakarben. Thereafter Shanabhai went to Borsad Police Station and lodged the complaint stating that since the mother of the complainant used to quarrel with the appellant, stating that he had illicit relations with some one else, the appellant had strangled her to death. The said complaint was registered with Borsad Police Station as C.R. No.I 166/1998.

2.3 On receipt of the complaint the inquiry officer went to the place of incident and prepared necessary inquest panchnama and the dead body was sent for postmortem. Statement of Shardaben was recorded who stated that she had seen the appellant leaving the house after committing the murder. He has also recorded statement of other witnesses. Since the appellant was absconding, on 23.8.1998 the appellant was arrested under a warrant. Looking to the allegation made in the complaint, offence was registered under section 302 of IPC. Therefore, chargesheet was submitted in the Court of learned Judicial Magistrate, First Class, Borsad. Since the case was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class, Borsad, committed the case to Court of Sessions Nadiad under section 209 of the Criminal Procedure Code.

2.4 The appellant-accused had pleaded not guility. Since the appellant-accused had not engaged any Advocate to defend his case, one Shri M.P. Brahmbhatt was appointed to defend his case by Legal Aid Authority.

2.5 The Sessions Court in all examined 7 prosecution witnesses as

under:

1. Dr. Prashant Rasikbhai Patel (Exh.7)
2. Sanabhai Mangalbhai (Exh.9)
3. Shardaben Shanabhai (Exh.11)
4. Pravinbhai Harsanbhai (Exh.12)
5. Jabarbhai Hamirbhai Jalu (Exh.14)
6. B.K. Nanavati (Exh.18)
7. V.M. Barod (Exh.21)

In order to establish the case the prosecution has produced the following documents on record:

1. Complaint of Shanabhai (Exh.10)
2. Panchnama of the scene of incident (Exh.13)
3. Inquest Panchnama (Exh.15)
4. Panchnama of clothes on the dead body (Exh.17)
5. Panchnama of the accused (Exh.19).
6. Postmortem Report (Exh.8)
7. Certificate of cause of death (Exh.16)
8. Delephone Dairy entry of Borsad GeneralHospital (Exh.20)
9. Map of the place of incident (Exh.22).

2.5 On submission of closing purshis by the prosecution, learned Additional Sessions Judge, Nadiad, recorded further statement of the appellant-accused under section 313 of CrPC. Thereafter, after hearing the learned Advocates for the respective parties, learned Additional Sessions Judge, Nadiad, delivered the aforesaid judgement and order of conviction and sentence, against which the present appeal has been filed.

3.0 Mr. P.M. Vyas, learned Advocate appearing for the appellant-accused has taken us through the evidence of witnesses, and other documents on record and also the judgement and order of the Sessions Court. He submitted that there is no evidence on record against the appellant so as to convict him under section 302 of IPC and the prosecution has failed to prove the offences alleged against the appellant-accused. He further submitted that there are no eye witnesses to the alleged incident in question. He further submitted that the alleged role played by the appellant was not established and therefore the Sessions Court has committed an error in passing the impugned judgement and order of conviction.

4.0 Mrs. Manisha Lavkumar Shah, learned APP, appearing for the State has supported the judgement and order of conviction passed by the Sessions Court. She submitted that the medical evidence as well as the conduct of the appellant-accused clearly establish the involvement of the appellant-accused. She submitted that the evidence of son of the appellant i.e. Shanabhai (PW2) and daughter in law (PW3) shows that the appellant-accused has committed the murder and therefore no interference is called for in this appeal.

5.0 We have heard the learned Advocates for the respective parties and gone through the judgement and order of conviction and sentence and all other relevant record pertaining to the present case.

6.0 We may first examine the evidence of Dr.Prashant Raskibhai Patel, (PW1-Exh.7) the doctor who performed the postmortem of the dead body. According to him, on 18.7.1998 he was on duty as Medical Officer at Borsad General Hospital. He stated that he started the postmortem at 4.15 pm and concluded the same at 6.30 pm. According to him the cause of death is strangulation. The postmortem note states that the cause of death is due to cardio respiratory failure due to asphyxia due to throttling. Thus, it is established on record that the death was caused due to throttling and it was not a natural death, but a homicidal death.

7.0 Shanabhai Mangalbhai (PW2) was examined at Exh.9. In his deposition he stated that prior to two-three months from the date of the incident, there was quarrel between his father and mother and the Mother had gone to village Kavita. Thereafter on the assurance of his father that he would not quarrel with his mother, his brother and others had brought his mother back. This was three

days prior to the incident in question. According to him on the day of the incident he had gone for work. At that time his cousin Chottabhai Somabhai came and informed him that father of this witness had murdered his mother. When he reached home he saw the dead body of his mother and his wife Shardaben was there. She told this witness that his father had murdered his mother and run away from the scene of offence. His wife had seen the appellant. Thereafter he lodged the complaint with the Borsad Police Station.

8.0 Shardaben Shanabhai (PW3) was examined at Exh.11. In her evidence she stated that in the morning she had gone to wash clothes and after some time she had returned. At that time the house the door of the house was closed. When she reached there, the appellant-accused came out from the house and told this witness that he had killed her mother-in-law. After telling this he had run away. When she went inside she saw that her mother-in-law was lying on the floor and she was dead. Thereafter Lakhiben and others came there and later on the dead body was taken away for postmortem. In the cross-examination she has specifically denied the suggestion that the appellant-accused had not told her anything.

9.0 In view of the aforesaid state of record, it is established that Sakarben had died due to strangulation. Dr. Prashanth Rasikbhai Patel confirmed the postmortem report which stated that the cause of death is due to cardio respiratory failure due to asphyxia. He confirmed that the death of Sakarben due to throttling. In the evidence, Shanabhai, son of the appellant-accused had clearly stated that there was quarrel between his father and mother and his mother had left the house and gone to Kavita. Thereafter she was brought back only on the assurance that the appellant-accused would not quarrel with her. His mother had come back only three days prior to the date of incident. On the date of incident this witness had gone for work and Chottabhai Somabhai told him that father of this witness had murdered his mother. There is no reason to disbelieve the version of this witness, who is the son of the appellant-accused.

10.0 The crucial evidence is of Shardaben Shanabhai. When she reached the house the door was closed and the appellant-accused came out and told her that he had murdered Sakarben and by saying this he had run away from the scene of offence. This witness had also stated that Sakarben and the appellant had quarrels and

therefore Sakarben had left the home earlier. The evidence of this witness is not controverted. Thus, the evidence of Shanabhai (PW2) and Shardaben (PW3) clearly establish that there were quarrels between the appellant-accused and Sakarben. According to the evidence of Shardaben (PW3), after committing the offence the appellant-accused had told her that he had killed her mother-in-law and run away from the said place. There is nothing on record to disbelieve the version of this witness. In view of the evidence of Shanabhai (PW2) and Shardaben(PW3), along with the evidence of Drl Prashant Patel (PW1), we are of the view that the prosecution has successfully proved the case of the prosecution.

11.0 It is required to be noted that the appellant-accused had tried to create evidence to show that Sakarben had committed suicide by tying a saree on the fan. However, the evidence of Dr. Prashant Patel (PW1) and the postmortem note clearly show that the cause of death is due to throttling. Apart from that stool has passed, which is not possible in a case of hanging. Therefore the attempt on the part of the appellant-accused that it was a homicidal death could not be proved. Apart from that the conduct of the appellant-accused itself showed his guilt inasmuch as in normal

circumstances, if it was a homicidal death, the appellant-accused could not have run away form the place of incident. Further, the appellant-accused was thereafter absconding and on warrant he was arrested. The presence of the appellant at the place of incident is natural one and there was no reason for Shardaben to make an incorrect statement about the appellant-accused. The appellant-accused has failed to point out that Shardaben (PW3) was not telling truth when she stated that the appellant had told her that he killed her mother-in-law.

12.0 It is also required to be noted that at the time of incident the appellant-accused was in the house and in ordinary circumstances, when his wife is dead, he would not go away from the said place. In the present case he has not only run away from the said place and did not come there and he was absconding. This would also support the say of witnesses Shanabhai (PW2) and Shardaben (PW3).

13. Apart from other evidences on record, even in the statement under section 313 of CrPC the appellant has not explained as to how his wife has died.

14.0 On an evaluation of the entire evidence appearing on record, we are of the opinion that the prosecution was able to prove the case against the appellant-accused. We are, therefore, in complete agreement with the judgement and order of conviction and sentence passed by the Additional Sessions Judge, Nadiad, which does not call for any interference. In the result, the appeal deserves to be dismissed and is accordingly dismissed.The appellant Mangalbai Jesangbhai Parmar of Criminal Appeal No.180 of 1999 is on bail and hence, his bail bond shall stand cancelled. He is directed to surrender before the Jail Authorities within a period of two months from today.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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